

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2970 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
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PARGHI PREMJIBHAI KALIDAS

Versus

STATE OF GUJARAT & ANR.

Appearance:

None present for Petitioner
MR DA BAMBHANIA for Respondent No. 1, 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 07/02/97

ORAL JUDGEMENT

1. Perused the Special Civil Application and heard learned counsel for the respondents.
2. The petitioner filed this Special Civil Application and prayed therein that the respondents may be restrained from terminating his services.
3. The facts of the case, in brief, are that the

petitioner belongs to schedule caste and possesses the qualification of graduate in arts. The second respondent herein, Superintending Engineer (R&B), Panchayat Circle No.2, Rajkot, called for nominees from the Social Welfare Office, Rajkot, to fill up the vacancy for the post of Jr. Clerk from scheduled caste candidates. Accordingly, the petitioner's name along with other candidates, was sent to the office of respondent No.2. The petitioner was informed about the date of interview vide letter dated 9-7-1991, issued by the respondent no.2. The petitioner was selected by the Selection Committee for the post of Jr. Clerk and he was given the appointment under the order dated 29th July, 1991. The petitioner joined the services in the office of the respondent No.2 on 1-8-1991. He was placed on probation for a period of six months which came to be expired on 31st January, 1992. He was granted further extension for a period of three months under the order dated 31st January, 1992. When the petitioner was not made permanent he made an inquiry and then the facts revealed are that the post on which the petitioner was appointed was required to be filled up by schedule tribe candidate as per the roster backlog and reservation policy of the Government. It is a case of the petitioner that in the Rajkot Panchayat (R&B) Circle II, there are three posts of Jr. Clerk in the set up. All these three posts were filled in by general category candidates. As per the rule, first post should have been filled up by S.T. candidate and subsequent two posts would go to the general category candidates. Again the next vacancy would go to the S.C. candidate. For the fourth time, vacancy had arisen in the year 1988 on account of resignation of Jr. Clerk named Bhartiben in the year 1988. Instead of appointing a schedule caste candidate the post was filled up by promotion from Class IV to Class III and a person from general category was appointed. The fifth time, the vacancy had arisen as a result of transfer of Jr. Clerk Shri L.D. Vaghela on 31-1-1991. This vacancy was filled up by appointing a schedule caste candidate i.e. the petitioner. Under this premises, the petitioner has come up with a case that the vacancy has rightly been filled in from schedule caste candidate in the office of respondent no.2.

4. The petitioner having apprehension of termination of his services, filed this Special Civil Application before this court. This court has protected the petitioner by grant of interim relief on 28th April, 1982 which order continues till this date. The petitioner continues in service on which there is no dispute by the respondents' counsel.

5. The counsel for the respondents, Shri D.A. Bhambhania fairly conceded that the requisition has been sent to the Social Welfare Department for the post of Jr. Clerk to be filled up by S.C. candidate. In para 2 of the reply, the respondents have come up with a case that by mistake while calling the names of the candidates from the office of the District Social Welfare Officer, in the requisition, in place of S.T. candidate, it was shown as S.C., and due to the mistake aforesaid, the present petitioner got the appointment otherwise he was not eligible. The requisition has been sent for S.C. candidate and rightly the Social Welfare Department has sent the candidate belonging to schedule caste. The services of the petitioner were sought to be terminated by the respondents only on the ground that the post was to be filled in from S.T. candidate but this court cannot be oblivious of the fact that the requisition has been made to the Social Welfare Department of the S.C. candidate. It is not the case where the petitioner is in any manner responsible for the mistake nor it is a case where the petitioner has got the appointment by some false representation or by concealing some facts. The petitioner is working for the last five years and he has been appointed after selection. Nothing otherwise has been said against the petitioner. In view of this fact, the services of the petitioner cannot be terminated on the ground of mistake said to be committed by the respondent in sending requisition for the reserved post.

6. In the result, this Special Civil Application succeeds and the same is allowed. Rule is made absolute with no order as to costs.

zgs/-